

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 06.09.2019

CORAM

**THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY****C.M.A. (MD) .No.1209 of 2018**

WEB COPY

1.N.Chandrasekaran  
2.R.Devaki  
3.V.Lakshmi Praba  
4.S.Revathy  
Malathi (Died)  
5.D.Rajasekaran  
6.Aravind  
7.Prakash

... Petitioners

Vs.

1.D.Ganesan  
2.S.Meerabhai  
3.N.Visalatha  
4.S.Gridharan  
5.S.Gowthaman  
T.Anusiya (Died)  
6.T.Ragavan  
7.S.Jalaja  
8.S.Muralidharan  
9.R.Vanaja

... Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 104 and Order 43(1) of Civil Procedure Code against the fair and decreetal order dated 26.11.2018 passed in I.A.No.27 of 2018 in O.S.No.23 of 2016 on the file of the I Additional District Court, Tuticorin.

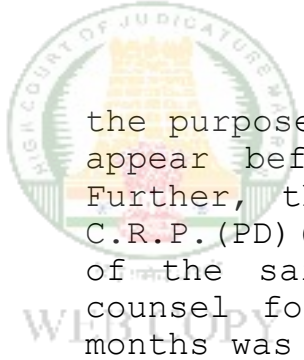
For Petitioners : Mr.V.Meenakshisundaram  
For R5, 6 & 8 : Mr.G.Aravinthan

**O R D E R**

The Civil Miscellaneous Appeal has been filed against the order of dismissal passed by the I Additional District Court, Tuticorin, dated 26.11.2018, in I.A.No.27 of 2018, to restore the suit in O.S.No.23 of 2016.

2. According to the appellants, the suit in O.S.No.23 of 2016 was dismissed for default on 14.02.2018 and on the very next day i.e., on 15.02.2018, the appellants have filed an application in I.A.No.27 of 2018 and the same was numbered on 20.02.2018.

3. The learned counsel for the appellants submitted that the reason for non-appearance when the matter was called on 14.02.2018 before the Court below is that the counsel concerned has held up in the next Court in the another matter. Therefore, he was not able to respond when the matter was called. However, the Court below rejected the said contention and recorded the finding that only for



the purpose of dragging on the proceedings, the appellants failed to appear before the Court and therefore, the suit was dismissed. Further, this Court has also passed an order dated 11.01.2017 in C.R.P. (PD) (MD).No.58 of 2017, directing the Court below to dispose of the said suit within a period of three months. The learned counsel for the appellants further submitted that the said three months was extended further.

4. The learned counsel appearing for the respondents would submit that the appellants have filed an application to restore the dismissal order on the very next day ie., on 15.01.2018 and it was numbered on 20.02.2018.

5. Heard the learned counsel appearing on either side and perused the documents filed by the appellants.

6. It is an admitted fact that the suit was dismissed for default on 14.02.2018 and I.A.No.27 of 2018 was filed on the very next day ie., on 15.02.2018, to restore the same and it was numbered on 20.02.2018. Without waiting for even a single day, the appellants have filed an application in I.A.No.27 of 2018 on the very next day of dismissal of the suit for default and the said act would show that he has not left the suit dismissed for default on his own. Therefore, the finding of the Court below that only for the purpose of drag on the matter, cannot be accepted and therefore, the judgment passed by the Court below is liable to be set aside. Accordingly, the Civil Miscellaneous Appeal is allowed and the order passed by the I Additional District Court, Tuticorin in I.A.No.27 of 2018 in O.S.No.23 of 2016, dated 26.11.2018 is set aside and the suit is restored to file with a direction to dispose of the suit within three months from the date of receipt of this order. No costs.

Sd/-

Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To  
The I Additional District Court,  
Tuticorin.

+1 CC to M/s.D.NALLATHAMBI, Advocate ( SR-85716[F] dated 06/09/2019 )

+1 CC to M/s.G.ARAVINTHAN, Advocate ( SR-86033[F] dated 10/09/2019 )

+4 CC to M/s.D.NALLATHAMBI, Advocate ( SR-86234[F] dated 10/09/2019 )

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